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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE

Federal Communications Commission

ORIGINAL
FILE

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In the Matter of: :

BINGHAMTON, NEW YORK :

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Docket Number: 92-116

DATE: August 7, 1997

VOLUME: 1

PLACE: Washington, D.C.

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Washington, D.C. 20006

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Before the
FEDERAL COMMUNICATIONS COMMISSION

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PRE-HEARING CONFERENCE

In re Applications of:

FCC 92M-769

03394

MM Docket No.

92-116

UHURU COMMUNICATIONS, INC.
For Renewal of License of Station
WUCI-FM, Binghamton, New York

BRED-910139WF

and

WSKG PUBLIC TELECOMMUNICATIONS COUNCIL
For a Construction Permit for a new FM
Station, Binghamton, New York

BRED-910501MB

ARROWHEAD CHRISTIAN CENTER
For a Construction Permit for a new FM
Station, Binghamton, New York

BRED-910501MC

Courtroom 1
2000 L Street, N.W.
Washington, D.C. 20554

Friday,
August 7, 1992

The above-entitled matter came on for
hearing, pursuant to notice, at 9:00 a.m.,

BEFORE:

THE HONORABLE ARTHUR I. STEINBERG
Administrative Law Judge

APPEARANCES:For WSKG Public Telecommunications Council:

TODD D. GRAY, Esquire
MARGARET L. MILLER, Esquire
of: Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Washington, D.C. 20037
(202) 857-2914

For Arrowhead Christian Center:

MICHAEL E. BELLER, Esquire
of: Verner, Liipfert, Bernhard, McPherson &
Hand, Chartered
Suite 700
901 15th Street N.W.
Washington, D.C. 20005-2301
(202) 371-6119

For the Commission:

ROBERT A. ZAUNER, Esquire
Hearing Branch
2025 M Street, N.W.
Washington, D.C. 20054
(202) 632-6402

1 P-R-O-C-E-E-D-I-N-G-S

2 9:06 a.m.

3 JUDGE STEINBERG: We're on the record.

4 This is a pre-hearing conference in MM
5 Docket Number 92-116 involving an application for
6 renewal of license of station WUCI-FM in Binghamton,
7 New York, and two completing applications for a
8 construction permit for that facility.

9 The case was designated for hearing on
10 June 8th, 1992. By order released June 11th, 1992,
11 the Chief Administrative Law Judge assigned the case
12 to me, established November 2nd, 1992 as the hearing
13 date and scheduled a pre-hearing conference for today.

14 Let me first take the appearances of
15 counsel.

16 For Uhuru Communications, Incorporated?
17 Let the record reflect no response.

18 For WSKG Public Telecommunications
19 counsel?

20 MR. GRAY: Your Honor, I'm Todd Gray and
21 with me is Margaret Miller. We also have observing
22 this morning Karen Hunter, one of our summer
23 associates.

24 JUDGE STEINBERG: For Arrowhead Christian
25 Center?

1 MR. BELLER: William H. Crispin and
2 Michael E. Beller from the law firm of Verner,
3 Liipfert.

4 JUDGE STEINBERG: McPherson and Hand, are
5 they still with you?

6 MR. BELLER: Yes. Bernard, McPherson and
7 Hand.

8 JUDGE STEINBERG: Okay. Well, I missed
9 that one. When was Mr. Bernhard added?

10 MR. BELLER: He's been since the
11 inception.

12 JUDGE STEINBERG: Before you were there.

13 MR. BELLER: Yes.

14 JUDGE STEINBERG: For the Chief Mass Media
15 Bureau?

16 MR. ZAUNER: Robert A. Zauner.

17 JUDGE STEINBERG: Okay. The first thing
18 I want to do is take care of some pending pleadings or
19 at summarize what we have in front of us. Okay.

20 The first thing I want to talk about is a
21 Motion to Delete Issue filed by WSKG on July 13th,
22 1992. Comments in support of the motion were filed by
23 the Mass Media Bureau on July 28th, 1992. WSKG seeks
24 the deletion of issue 2, which is a transmitter site
25 availability issue specified in the hearing

1 designation order. WSKG contends that the issue was
2 specified because of an error in the Bureau's
3 interpretation of certain engineering data.

4 The Bureau, in its comments, admits that
5 it misconstrued WSKG's engineering showing and
6 supports deletion.

7 The Motion to Delete will be granted and
8 Issue 2 will be deleted. Suffice it to say, WSKG has
9 established that the issue was specified in error on
10 the basis of an erroneous interpretation of
11 engineering data. Under these circumstances, deletion
12 of the issue is warranted and I'll confirm this ruling
13 in a brief order.

14 The second thing that I have is a Petition
15 for Leave to Amend filed by WSKG on July 24th, 1992.
16 The petition was unopposed. WSKG seeks to amend its
17 application to update information about the
18 composition of its governing board. Good cause has
19 been shown and the amendment will be accepted for
20 Section 1.65 purposes. This too will be confirmed in
21 an order.

22 The third thing I have -- third and fourth
23 things I have are a Motion to Dismiss filed by
24 Arrowhead and WSKG on July 27th, 1992 and a supplement
25 thereto which was filed by the same parties on August

1 4th, 1992. Arrowhead and WSKG seek the dismissal of
2 the application of Uhuru for failure to prosecute. By
3 my calculation, a response is due to be filed on
4 August 19th, 1992 and the moving parties have a right
5 to reply to whatever is filed. I'll issue a ruling on
6 that when the pleading cycle has been completed.

7 If the Bureau wishes to comment on that,
8 its comments would be looked forward to.

9 MR. ZAUNER: We intend to, Your Honor.

10 JUDGE STEINBERG: Okay. The last thing
11 that I have is a Motion to Enlarge Issues filed by
12 WSKG on July 13th, 1992. WSKG seeks to add three
13 issues against Uhuru. The Bureau filed an opposition
14 on July 28th, 1992 and WSKG filed a reply on August
15 3rd, 1992. Uhuru has not responded to the Motion to
16 Enlarge. A ruling will be made on the motion in due
17 course. Obviously I want to wait to see what I do on
18 the Motion to Dismiss before I spend any time on a
19 Motion to Enlarge.

20 Let me just make a statement for the
21 record concerning Uhuru. Initially a notice of
22 appearance was filed by counsel. The notice of
23 appearance was withdrawn. That's all a matter of
24 record. So, I presume that Uhuru is representing
25 itself pro se. Under the Commission's policies, the

1 fact that it's representing itself does not entitle it
2 to any special consideration. Uhuru will be held to
3 all the procedural formalities that the other parties
4 are held to.

5 The dates that we have set, the dates that
6 I set in the order prior to pre-hearing conference and
7 whatever rulings I make today are binding on Uhuru.
8 They had an opportunity to be here and for whatever
9 reason they chose not to be here. So --

10 MR. BELLER: May I ask you a question,
11 Your Honor?

12 JUDGE STEINBERG: Of course.

13 MR. BELLER: Were you notified by Uhuru
14 that they wouldn't be here today?

15 JUDGE STEINBERG: I have not heard
16 anything from them. The last thing that I heard, I
17 think, was the notice of withdrawal of counsel.

18 MR. BELLER: Thank you.

19 JUDGE STEINBERG: It wouldn't surprise me
20 if there was maybe a phone call when I got back or
21 maybe one this afternoon. But if there is such a
22 thing, I'll notify everybody as to what the story is,
23 maybe memorialize it in an order. I don't know. I've
24 never had that before, so I'll decide what to do after
25 -- if that situation comes up.

1 But the point is that whatever we do here
2 today they're bound by. That's point number one.
3 Point number two is they're not entitled to and they
4 will not get any special consideration.

5 Okay. Now, you all filed a -- didn't
6 file, you all sent to me a letter concerning the
7 meeting that you had with respect to the various
8 things I asked you to meet on. Unfortunately, Uhuru
9 didn't participate in those meetings. So, I guess you
10 weren't able to accomplish everything that you needed
11 to accomplish.

12 Forgetting about Uhuru, is there any
13 possibility of settlement in this thing? I know the
14 letter said that you basically didn't think so.

15 MR. GRAY: Speaking for WSKG, our offer
16 still stands regardless of what happens with Uhuru to
17 reimburse expenses of Arrowhead, subject I think at
18 this point to an accounting as to what those expenses
19 might be. If they're reasonable, I think our offer
20 still stands. But apart from withdrawal at this
21 point, I don't see a basis for settlement, speaking
22 from our point of view, Your Honor.

23 JUDGE STEINBERG: Okay. Does -- Mr.
24 Beller?

25 MR. BELLER: I wasn't party to the

1 settlement discussions, Your Honor, but I understand
2 that Arrowhead has made a similar offer to WSKG to
3 reimburse it for its expenses.

4 JUDGE STEINBERG: Okay. So we're in
5 never-never land here.

6 Do your clients appreciate how much
7 this -- if this thing goes to hearing, you've got to
8 go through discovery, you've got to go through the
9 hearing, you've got to write findings and conclusions,
10 whoever loses has to appeal, whoever loses at the
11 review board has to appeal again. Do they appreciate
12 that this entire case might cost them more than the
13 station is worth? Have you told them that?

14 MR. GRAY: Yes. As a matter of fact, and
15 only slightly tongue-in-cheek, I would say that the
16 impact of this will probably quickly become apparent
17 to them as they start to receive our invoices. But
18 yes, we have discussed that. I think part of the
19 difficulty here is that these decisions are not made
20 in this context merely on the basis of is what I'm
21 going to get economically worth what I have to pay.
22 That might be a common thread in the considerations in
23 a commercial case, but here you've got people who, I
24 think it's fair to say, are pursuing what they regard
25 as higher values. They've got a mission to

1 accomplish, if you will.

2 I will certainly relay to our client once
3 again the point you're making.

4 JUDGE STEINBERG: Yes. I would direct you
5 to do so.

6 Mr. Beller, do you have any input on that
7 comment?

8 MR. BELLER: I have not had discussions
9 with the client myself, Mr. Crispin has. But as a
10 matter of practice, he undertakes to -- and I know I
11 do, undertake to inform clients as to the costs and
12 benefits of going to hearing rather than settling.

13 JUDGE STEINBERG: Okay. I think it's fair
14 to say that the objectives -- I don't see why the
15 objectives of your groups can't both be accomplished,
16 one group running Monday, Wednesday, Friday and
17 alternate Sundays, and the other group running
18 Tuesday, Thursday and Saturday and alternate Sundays.
19 That way, you can end the thing right now, everybody
20 gets a little piece of the pie and presumably their
21 constituencies will know when to tune into the
22 station. That, to me, would seem a very reasonable
23 basis for settling this case.

24 One of you people are going to lose. I
25 don't know which one it's going to be, but one of you

1 are going to lose and spend a whole lot of money
2 losing. The other is going to win, and spend a whole
3 lot of money winning. It's going to take years. If
4 this case is typical, it will take years. Lord knows
5 how many remands there might be. I try to get things
6 right the first time, but obviously the Commission
7 doesn't agree with me all the time. As a matter of
8 fact, they haven't agreed with me yet. I'm 0 for 1.

9 MR. ZAUNER: I can't believe that last
10 statement, Your Honor. That's just --

11 JUDGE STEINBERG: I'm 0 for 1, but what
12 the heck. Maybe I'll be 1 for 2 the next time, bring
13 my average right up there.

14 But this could take years and meanwhile
15 these organizations are not accomplishing their
16 mission. You settle this thing, there's no reason why
17 they can't pour the concrete before the Binghamton
18 freeze. Anyway, they could probably be on the air in
19 very short order.

20 So, I would direct both of you to contact
21 your clients and tell them of my very strong belief in
22 settlement and urge them that they do settle before
23 the expenses get out of hand, which could happen very
24 quickly.

25 Okay. This would go for shared time.

1 Obviously, I'm in favor of it. If you can't settle
2 with one party getting out, why not share time. I
3 think that's a perfect solution to a situation like
4 this. This is, again, assuming that it's just the two
5 of you and that Uhuru is not in it. If Uhuru is still
6 in it, then we can forget about settlement or anything
7 else, I think.

8 Now, the next thing I have is scope of the
9 issues. Now, issue 1 seems to be pretty
10 straightforward. Issue 2 is deleted. Issue 3 is a
11 contingent environmental issue which you both
12 addressed in amendments and we'll wait for the Bureau
13 to review those amendments and perhaps send me a
14 letter. If Mr. Zauner could stay on top of that, I'd
15 appreciate it.

16 Issue 4 is comprised of three parts and
17 I've never presided over an educational case before.
18 What I'd like to do is set a date and perhaps Mr. Gray
19 and Mr. Beller could give me your briefs on what in
20 the heck is included in issue 4, what factors are
21 considered and what the case law is. It doesn't have
22 to be anything real extensive, just something that
23 will allow me to read into what I've got to do and
24 what factors I have to take into consideration. A
25 joint brief would be wonderful.

1 I don't think that really this should be
2 a matter of great controversy. Maybe it is, I don't
3 know. But if you two can get together and give me a
4 joint brief as to what the non-commercial educational
5 comparative criteria are and just give me relevant
6 case law, then I can read up on it and maybe know what
7 I'm doing.

8 MR. GRAY: Your Honor, do you have a
9 specific time frame in mind for that?

10 JUDGE STEINBERG: When is discovery?

11 MR. GRAY: That happens to be sort of the
12 one issue that we were not quite able to reach.

13 JUDGE STEINBERG: Okay. Well, I'm going
14 to get to that.

15 MR. GRAY: Okay.

16 JUDGE STEINBERG: You're talking about
17 depositions September 8th to 11th and the 14th to
18 18th. I'm just trying to think of what would be
19 convenient for you and give me enough time to look
20 into everything I've got to look into. Why don't we
21 make it like October 1st or something.

22 MR. GRAY: Oh, okay.

23 JUDGE STEINBERG: I don't need it anytime
24 soon, just as long as I know what I'm doing at the
25 hearing. Either that or if there's -- I'm thinking

1 out loud now. If problems come up during discovery as
2 to the scope of examination, I ought to be able to
3 know what I'm -- if you call me for rulings. So,
4 maybe we ought to make it before discovery commences.

5 MR. GRAY: I might make just a comment to
6 assist here. We participated in the ongoing
7 rulemaking right now that deals essentially with the
8 commercial issues, but the Commission also addressed
9 the non-commercial issues and we did -- on behalf of
10 a number of our public broadcasting clients, did some
11 comments on that, including an analysis of all of the
12 cases that had ever been decided dealing with non-
13 commercial cases. I think we ought to be able to
14 prepare something reasonably quickly. Obviously we'd
15 need to have input from Arrowhead. But I don't see
16 it as being something that would be a terrific burden.

17 JUDGE STEINBERG: Does anybody have a
18 calendar? I just wonder what day is September 1st on?

19 MS. MILLER: September 1st is a Tuesday.

20 JUDGE STEINBERG: Want to make it
21 September 1st? Is that going to mess up anybody's
22 summer vacation?

23 MR. GRAY: That's fine.

24 JUDGE STEINBERG: Let's make it September
25 1st. That way you've got enough time to get together.

1 MR. BELLER: In addition, Your Honor, both
2 counsel for SKG and counsel for Arrowhead have just
3 completed a non-comparative hearing. So, I think the
4 parties have an understanding, a good understanding of
5 the issues and the scope of the issues.

6 JUDGE STEINBERG: Okay. I would prefer a
7 joint submission, if it's possible. If there's
8 disagreement about one point or another, I think you
9 can put that in the brief too. Why should I get two
10 25 page documents if I can only get one and both of
11 them are going to say mostly the same thing?

12 Okay. I'm not going to issue an order on
13 that. This will be on the record. And again, the
14 date is flexible. If you find that you need more
15 time, that's fine. Just ask. If you can do it
16 earlier, that's fine too.

17 Mr. Zauner, do you participate in the non-
18 commercial educational comparative issue?

19 MR. ZAUNER: No.

20 JUDGE STEINBERG: Big smile. Okay.

21 MR. ZAUNER: At least I don't believe so.

22 JUDGE STEINBERG: Well, if Mr. Zauner
23 wants to get involved in it, that's fine with me too.
24 The more help the better.

25 Okay. Now, getting back to the scope of

1 the issues, you said that you had -- in your letter of
2 August 5th you said there were problems. Who wants to
3 address that?

4 MR. GRAY: With respect to scope of the
5 issues, Your Honor, I think our main concern was there
6 may be some confusion over the scope of issue 1 which
7 you passed over at the beginning of this discussion.
8 One of the suggestions of Bureau counsel in response
9 to our Motion to Enlarge against Uhuru was that
10 perhaps issue 1 was already broad enough to encompass
11 the scope of several of the matters we raised. For
12 example, whether they're financially or technically
13 qualified based on the current showings. So, in that
14 sense, there may be a little bit -- I don't know that
15 it's so much of a disagreement as it just sort of a --
16 we're happy to adopt their interpretation of the
17 issue, if that's what it is. But there's some
18 unsettled aspects to that.

19 With respect to issue 4, we did not do
20 what I think you contemplate our doing in this brief,
21 which is to go and make a list of what are the various
22 possible things people could argue back and forth.
23 But as Mr. Beller has indicated, we've been involved
24 in some other hearings. I have to say that my
25 understanding of the last aspect of issue 4, issue

1 4(c) is that things are fairly wide open in terms of
2 what you are permitted to argue. There is case law on
3 various points as to the persuasiveness or not of
4 various arguments. I think there's some case law on
5 the issue. For example, diversification, a fairly
6 recent Commission case, where they basically said it
7 was not a factor.

8 JUDGE STEINBERG: I think I remember that,
9 where they said in non-commercial educational cases it
10 doesn't matter.

11 MR. GRAY: But in terms of the scope of
12 things in terms of are people free to suggest that
13 this factor that applies to them is a good thing, my
14 impression is that it's fairly wide open other than we
15 recognize that the case law says certain things are
16 worthwhile and certain other things are not.

17 JUDGE STEINBERG: Well, I think that could
18 be something you could include in your brief. If
19 there's disagreement, you could say WSKG asserts that
20 these factors are relevant and Arrowhead says they
21 aren't and Arrowhead said these are relevant and WSKG
22 says they aren't. Then I can go from there.

23 As far as the scope of issue 1, I have to
24 be candid. Aside from looking to see what issues you
25 added, what issues you were requesting, I didn't read

1 the Motion to Enlarge yet. Usually I don't -- I have
2 enough to read without reading what I don't have to
3 read at the moment. I didn't have to read the motion
4 to enlarge. I don't have to read it until I'm ready
5 to rule on it. So, it's usually my practice not to do
6 that.

7 But if the Bureau says these matters are
8 encompassed within the scope of issue 1 and I agree,
9 you've gotten the relief you requested anyway. If I
10 said they're not, we need separate issues, and I think
11 if you look at Evansville Skyway where the Commission
12 was very clear about you can't reach certain
13 conclusions without having separate issues, maybe the
14 better thing to do is add issues. But then again, if
15 you get an order saying you specifically put on notice
16 that these things are going to be considered, that has
17 the same affect.

18 But I'll deal with that in my ruling on
19 the motion to enlarge.

20 MR. BELLER: Well, perhaps it will be
21 moved in light --

22 JUDGE STEINBERG: You shouldn't say things
23 like that out loud. Things have a way of messing up.
24 Like when you're driving to the Orioles game and the
25 beltway is free and clear and you're moving and

1 somebody says it out loud. Sure enough, you get
2 around the next bend and it's all packed up. So, you
3 can think it, but you don't say it.

4 MR. BELLER: And then the pitcher has a no
5 hitter going into the bottom of the 7th and you don't
6 want to say that either.

7 JUDGE STEINBERG: Well, the announcer will
8 say it and they'll take care of that.

9 Anything else on the scope of the issues?
10 Okay.

11 Now, on discovery, let me just make a
12 general statement. Mr. Beller has heard this before,
13 I think.

14 Please, please, please make a good faith
15 effort to work out your differences between
16 yourselves. You should make serious and genuine
17 effort to compromise if you can't reach an agreement.
18 I don't want you to come to me for a ruling on a
19 discovery matter without first attempting to work out
20 between yourselves, or if Uhuru is involved, among
21 yourselves. Just don't be filing discovery requests
22 as a matter of first instance. Try to work things out
23 yourself.

24 I want you to come to me for rulings only
25 if there's a complete inability to work something out

1 and you've reached brick walls. Ruling on discovery
2 is not one of my favorite things to do. I think in
3 most cases it's totally unnecessary. I think
4 everybody knows that they're entitled to do and what
5 they're not entitled to do. There's no reason why
6 agreements can't be reached.

7 Now, that having been said, what needs to
8 be straightened out today?

9 MR. GRAY: If necessary, I suppose one
10 thing would be to put your stamp of approval on the --
11 I guess you'd call it the standard production request
12 that at least as between Arrowhead and WSKG we have
13 worked out as being something to cover the standard
14 issues in the case. I would be happy to have you say,
15 "Okay, this is it. Go do it."

16 JUDGE STEINBERG: That's fine with me.
17 You've worked it out, you've reached an agreement,
18 exchanged the documents. You can work out the timing
19 yourself just as long as it's not -- just as long as
20 one party isn't being prejudiced by the timing. As
21 far as I'm concerned, Uhuru had the opportunity to
22 attend the meeting, Uhuru had the opportunity to
23 participate in formulating a joint request for
24 documents. They didn't. My advice to you would be
25 obviously Arrowhead and WSKG have agreed on this, so

1 nothing further has to be done with respect to you
2 two. With respect to Uhuru, you should file -- not
3 file, according to 1.325 of the Rules, the new rule,
4 you send a copy to them and direct it to them and
5 request that these are the documents you want produced
6 within ten days. If they don't produce them, file a
7 Motion to Compel. If they object, file a motion --
8 you know, just follow the rule. Between the two of
9 you, you don't have to do that because you've agreed.

10 If either of you want to add requests to
11 Uhuru because they've got other issues against them,
12 go ahead and do it. If you two want to file a joint
13 type of request, including what you've got here
14 attached to your August 5th letter as Exhibit 1, you
15 want to add to that, add to it. But my advice is
16 follow 1.325 when you're dealing with Uhuru.

17 With respect to depositions, my advice is
18 you all can agree on the deposition schedule between
19 the two of you and I think you've agreed on the weeks.
20 I presume you've agreed on who you're going to call.
21 Maybe it hasn't gotten that far.

22 MR. GRAY: No. I think the thought was
23 we'd look at the documents and have some further
24 discussions on that.

25 JUDGE STEINBERG: Okay. But there's no

1 reason why you two can't agree. With respect to
2 Uhuru, hit them with notices to take depositions. If
3 they're not going to be cooperative, then in terms of
4 meeting and agreeing, et cetera, then you've got no
5 choice but to follow whatever the Commission's rules
6 provide.

7 MR. GRAY: As a follow-up to that, could
8 I ask two questions? The first would be with respect
9 to the document exchange with Uhuru or the request for
10 production of documents. In order to move things
11 along, did you have any objection if we were to serve
12 the standard ones on them now and then follow-up in
13 another week? We were withholding the preparation of
14 a document request based on the non-standard issues
15 until we had a ruling on the Motion to Enlarge. I'm
16 inclined now to maybe go ahead and just do it. But
17 do you have any objection if we do that in a separate
18 request?

19 JUDGE STEINBERG: No, I don't have any
20 problem with that. The discovery completion date is
21 October whatever, as long as things get finished by
22 then. I would say if you file the document discovery
23 request on October 1st and they object, I'm going to
24 throw it out. I have in the past because it was filed
25 too late and it would be disruptive. But that's the

1 guideline.

2 MR. GRAY: That sort of suggests my second
3 question, which was the one area where we had some
4 disagreement was on the document production schedule
5 and our hope was to have it be sooner rather than
6 later, the hope being we could get the documents, deal
7 with motions to compel or objections and still have
8 them in plenty of time to prepare for the depositions.

9 JUDGE STEINBERG: Oh, you're talking about
10 the Uhuru documents?

11 MR. GRAY: No, I'm actually talking as
12 between Arrowhead and WSKG.

13 JUDGE STEINBERG: Well, make them
14 returnable ten days, ten days from the date of the
15 request. You all can say, "Well, we've agreed these
16 are the documents. We'll exchange them ten days from
17 now or 15 days from now," whatever you can reach in
18 accommodation. I would say certainly if you came to
19 me for a ruling, I would say 15 days is plenty of
20 time. Usually where I direct somebody to produce
21 documents, it's within ten days, or such other period
22 as the parties mutually agree upon. But if it's going
23 to impact on the -- if it's going to put the
24 depositions back and -- push them back into weeks that
25 you haven't agreed on, then I'd say get them exchanged

1 quickly. I don't want a delay to be caused by that.

2 Why should there be objections and motions
3 to compel if you've agreed to this production?

4 MR. GRAY: It strikes me the only possible
5 objections might be based on privilege. I believe
6 that we will have some documents that will identify
7 that we'll claim attorney/client privilege for and I
8 hope there's not a problem with that.

9 JUDGE STEINBERG: Yes. Well, you can
10 produce as much of it as is not privileged.

11 Okay. Anything else that needs my
12 attention?

13 MR. BELLER: No, Your Honor.

14 JUDGE STEINBERG: Okay. If for some
15 reason you need a conference, just call up. First
16 I'll try to talk you out of it and then, if I can't
17 talk you out of it, I'll schedule something. We may
18 even hold an informal conference in my office. It
19 depends on what the nature of the dispute is.

20 Other than that, I guess I've got nothing
21 further. We'll stand in recess until November 2nd.
22 I would just again urge you and direct you to tell
23 your clients to settle this silly thing. That would
24 certainly be in the public interest. It would be
25 everybody's interest except the pocketbooks of the